IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 742 of 1997

WITH

CIVIL APPLICATION No.769 of 1997

Airports Authority of India
(National Airports Division)
through its Western Regional
Office, Santacruz Airport,
Santacruz Mumbai. .. Petitioner.

versus

M/s.Cama Aviation Services
Hangar no.5, Juhu Aerodromes,
Juhu, Mumbai 400 049. .. Respondents

...

Mr.Girish Kulkarni i/b M.V. Kini & Co. for the petitioner.

None for the respondents.

CORAM : Smt.Ranjana Desai &
A.P. Deshpande, JJ.

DATED : 24th July, 2006.

ORAL JUDGEMENT :- (Per Smt.Ranjana Desai, J.)

1. The petitioners are a Body Corporate constituted under the Airports Authority of India Act, 1994 for the management, control and maintenance

of all the airports within the territory of India except the international airports. The respondents are a sole proprietary concern and one Phiroz Khershed Cama is its sole proprietor. In this petition, the petitioners have challenged order dated 8th October 1996 passed by the City Civil Court, Mumbai in Miscellaneous Civil Appeal No.83/96 filed under sub-section (2) of section 7 of the Public Premises (Eviction or Unauthorised Occupants) Act, 1971 (for short 'the said Act').

2. It would be advantageous to give gist of the facts as set out by the petitioners in the instant petition. A plot of land admeasuring 361 sq.m. with existing Hangar thereon being Hangar no.5 at Juhu Aerodrome was given on licence to the respondents vide agreement dated 20.2.1978. According to the petitioners, the said licence expired by efflux of time on 19.9.1981. It is the case of the petitioners that thereafter there was no further renewal or fresh licence executed between the parties and as such, occupation and existence of the respondents at the said plot of land was without any authority and therefore, respondents are unauthorised occupants within the meaning of section 2(g) of the said Act. According to the petitioners, the said licence expired in 1981 but the respondents continued to occupy the said plot of land and the said Hangar.

The respondents refused to vacate the same after repeated request. By the notice dated 5.12.1984, the petitioners terminated the licence.. Though the said notice was duly served on the respondents, the respondents failed and neglected to vacate the said Hangar. By subsequent notice dated 21.6.88 under section 4 of the said Act sent by the Estate Officer, the respondents were called upon to show cause why an order of eviction should not be passed against them.

3. The petitioners ultimately initiated eviction proceedings under section 4 of the said Act. After perusing the evidence and hearing the parties, the Estate Officer passed the eviction order dated 17.12.1990 interalia holding that the respondents are in unauthorised occupation of the public premises. The Estate Officer ordered the respondents to vacate the public premises. However, by this order the Estate Officer also gave the respondents opportunity to pay the arrears and get their occupation regularised. The respondents did not get their occupation regularised. Hence the petitioners issued show cause notice to them calling upon them to say why damages should not be recovered from them. The Estate officer after hearing both sides by his order dated 5.2.95 ordered the respondents to pay to the petitioners damages at the rates specified in the said order under Section 7 of the said Act. The

respondents preferred appeal in the City Civil Court at Mumbai. During the pendency of the appeal the petitioners sealed Hanger no.5. The respondents took out notice of motion praying for removal of the seals. The City Civil Court by its order dated 8.1.96 held that eviction order was already passed on 17.12.90 and that had become final. The notice of motion was dismissed. The respondents preferred Civil Revision Application no. 112 of 1996 and 113 of 1996 in this court to challenge the dismissal of the notice of motion. On 20.2.96 this court dismissed the same holding that there was no jurisdictional error and no interference was called for. The respondents then preferred Writ Petition No.609 of 1996 in this Court challenging the petitioners action of sealing the hanger and in that petition the respondents made averments to the effect that there was no enforceable eviction order passed against the respondents. Thus in this petition the respondents questioned the very existence of this order. The said writ petition was dismissed on 11.4.96 by this court by a speaking order.

4. Aggrieved by the said order of dismissal, the respondents preferred an appeal before the Division Bench of this Court being Appeal No.463/96. On 26.4.1996, the said appeal was dismissed.

5. Being aggrieved by the said order dated 26.4.1996, respondents preferred a Special Leave Petition in the Supreme Court being Special Leave Petition no.12082/96. On 27.5.1996, the Supreme Court summarily dismissed the Special Leave Petition.

6. Estate Officers order u/s.7(2) of the said Act dated 5.12.1995 interalia directed the respondents to pay to the petitioners damages at the rate of Rs.160/- per sq.mt. per month for the period between 15.1.1994 and 31.6.1996 and also granted interest at the rate of 12% per annum for the delayed payment upon the arrears of the amount payable under the said order. According to the petitioners as per the said order, approximately a sum of Rs.95 lakhs is due and payable by the respondents to the petitioners as on date with accrued interest thereon as specified under the aid order.

7. The Miscellaneous Appeal no.73/96 preferred by the respondents challenging the said order on the ground that the rates fixed by the Estate Officer are exorbitantly high was allowed by the learned Principal Judge by the impugned order. He interalia held that the order of eviction dated 17th December 1990 is unenforceable and ineffective and as such, the respondents are not in unauthorised occupation and as such, no order u/s.7(2) of the said Act for

fixation of damages can be passed. He accordingly quashed the order dated 5th December 1995 u/s.7(2) of the said Act fixing the damages. The said order is challenged in this Writ Petition.

8. We have heard Mr.Kulkarni, the learned counsel appearing for the petitioners at considerable length. The petition was heard on 21.7.06. The learned counsel for the respondents was not present. Today also, learned counsel for the respondents is not present. We have therefore no option but to proceed with the writ petition without the assistance of the learned counsel for the respondents.

9. Mr.Kulkarni, learned counsel for the petitioners contended that it was not open for the learned Principal Judge to hold that the order of eviction dated 17.12.1990 is ineffective and unenforceable when the said question was finally concluded by this Court and also by the Supreme Court. The learned counsel drew our attention to the averments made by the respondents in Writ Petition no.609/96. He pointed out that in that Writ Petition, the respondents had contended that order dated 17.12.1990 passed by the Estate Officer was self-operating and it was to become unenforceable only if there was failure to make the payment as directed by the said order. It was further averred

that there was complete compliance of the said order and therefore as per the terms of the said order, the order had become unenforceable. The learned counsel pointed out that the said Writ Petition was dismissed by a speaking order by this Court on 11.4.1996. Appeal carried from the same was also dismissed by this Court by a speaking order and Special Leave Petition carried from the same was also dismissed. In the circumstances, learned Judge could not have gone into that aspect again. He could not have held that the order of eviction was unenforcable. He therefore submitted that impugned order deserves to be set aside.

10. We find considerable merit in the submission of Mr.Kulkarni. We find the Estate Officer's order dated 12.12.90 to be very well reasoned. He has taken into account all the important events which ultimately led to his order. His order clearly indicates that there has been a persistent failure on the part of the respondents in paying dues as per agreement dated 20.2.78. The petitioners appear to have shown a very considerate approach. The petitioners accommodated the respondents on a number of occasions. But the respondents failed to keep their commitment of making payment.

11. It appears from the Estate Officer's order

that by notice dated 5.12.84, the petitioners had called upon the respondents to hand over possession of the public premises as they had failed to pay the dues as per the agreement. The respondents did not comply with the notice. By notice dated 21.6.88, the petitioners reminded the respondents to pay outstanding dues to enable them to consider the respondents request for renewal of licence. The petitioners also gave notice to the respondents calling upon them to vacate and hand over possession of the public premises and intimated to them that in the event of failure, action for initiation of eviction proceedings will be taken against them. Since the respondents failed to comply with the notice the petitioners initiated eviction proceedings. The respondents in their reply admitted that they had not made payment of the dues. Efforts were made to settle the dispute. A note of understanding dated 26.5.90 was executed by the petitioners and the respondents. Under the said agreement the respondents were requested to pay the outstanding within a particular timeframe. The respondents did not pay the dues as agreed. On account of this conduct of the respondents, the petitioners had to initiate eviction proceedings.

12. In his order dated 12.12.90 the Estate officer has after considering all the relevant facts

recorded an unassailable finding that the respondents have committed a breach of Clause I Sub Clauses 1, 2 and 3 read with Clause IV of the agreement dated 20.2.78 relating to the payment of dues of monthly rent and other charges payable from time to time.

13. It is pertinent to note that even in this order the Estate Officer directed the respondents to vacate the public premises on or before 31.5.91 subject to observing the requirement to pay the outstanding dues payable for the use and occupation of the public premises by 1.1.91 and subject to further paying monthly dues and damages and conservancy charges at Rs.12,888/- p.m. by 10th of each month in advance from 1.1.91 to 31.5.93. It was further ordered that in the event of default or failure or refusal to pay the said sum in the said manner the order of eviction shall be due for enforcement within 30 days of publication of the order. Significantly the respondents were granted liberty to approach the authority concerned by due fulfilment of the terms as may be agreed upon and regularisation of occupation of public premises and grant of fresh licence as provided for in the note of agreement dated 26.5.90 between the parties. The order ended with a clause that in the event of failure to comply with this order the respondents are

liable to be evicted from the public premises, if need be by use of force. The petitioners did give the respondents a long rope. An opportunity was given to the respondents to pay the arrears and get their occupation regularised. The respondents failed to do so. In the circumstances, the petitioners had to make application under sub section 2 of section 7 of the said Act for damages.

14. While considering this application for damages the Estate Officer meticulously considered every aspect of the matter. He properly assessed the damages and directed the respondents to pay damages at the rate of Rs.120/- per sq.mtr. per month for the period 1.12.88 to 14.1.94 and at the rate of Rs.160/- per sq.mtr. per month for the period 15.1.94 to 31.3.96 as damages payable by 10th of each month in advance commencing with the first month from 1.12.88 on account of unauthorised occupation of the said public premises. He ordered that the amount payable on account of damages shall be paid in two equal instalments by 31.3.96 subject to first instalment being paid by 31.1.96. He directed the respondents to pay simple interest at the rate of 12% per annum on the arrears of amount payable upto 15.11.95 and at the rate of 13% per annum as the arrears of amount payable from 16.11.95. For the interest accrued on damages also he laid down a

timeframe. He ordered that simple interest at 31% per annum shall become payable on delayed payments.

15. The appeal carried from this order was filed by the respondents on 16.12.95. As we have noted hereinabove in the Writ Petition no.609 of 1996 filed by the respondents challenging the sealing of Hanger no.5, the respondents had raised a contention that the eviction under order dated 17.12.90 was unenforceable because the respondents had made payments as directed under the said order and they had complied with it. The respondents had contended that it had ceased to have any effect. We may quote the relevant paragraphs;

> "26. The petitioner states that the order dated 17.12.1990 passed by the Estate officer was self operating and it was to become enforceable only if, there was the failure to make the payments as directed by the said order. As the petitioner has made the complete compliance of the said order, the same ceases to have any effect and it has come to an end. There is thus no effective and enforceable eviction order passed by the Estate Officer

either with regard to the hanger no.5 or with regard to the land".

"38(a) The petitioner submits that there is no effective and enforceable Eviction order passed against the petitioner whereby the respondents have secured any right to take the possession of the hangers.

(d) The Eviction order passed in E.O.15/1990 is self operative order which expressly provides that in the event of refusal or failure to comply with the order within the period specified by the said order, the petitioner is liable for the eviction from the said premises. The Eviction order, therefore, becomes operative only if there is a failure or refusal on the part of the petitioner to comply the said order. As stated above, the petitioner has complied with the said order and so the said order has come to and end and, therefore, cannot be enforced".

16. This Writ Petition was dismissed by this

Court on 11.4.96 by a speaking order. This court observed that the respondents had preferred an appeal against the eviction order passed in respect of land and Hanger on 29.8.88 and it was withdrawn by them. It was further observed that on 17.12.90 an order in respect of Hanger No.5 was also passed against the respondents and the respondents had not challenged it. This court also referred to the fact that the civil revision application filed by the respondents was dismissed by this court.

17. Aggrieved by the order of dismissal of the writ petition, the respondents preferred an appeal before the Division Bench of this court being Appeal No.463 of 1993. On 26.4.96 the said appeal was dismissed by a speaking order.

18. Being aggrieved by the said order dated 26.4.96, the respondents preferred a Special Leave Petition in the Supreme Court being Special Leave Petition No.12082 of 1996. On 27.5.96 the Supreme Court dismissed the said petition. Thus the order of eviction dated 17.12.90 and the order of sealing assumed finality. We are distressed to note that though Special Leave Petition was dismissed on 27.5.96, additional grounds were introduced by the respondents in their pending appeal before the City Civil Court, Mumbai on 3.7.96 challenging the eviction

order dated 17.12.90, though initially the said order was not even mentioned in the appeal. Thus in effect the City Civil Court was asked to adjudicate upon issues which were finally concluded by the Supreme Court. The said additional grounds read as under:

> "J2. The Second Show Cause Notice dated 13.11.1990 issued under the provisions of Section 4 of the PPE Act 1971 in respect of land leased to the Appellant as per agreement dated 16.1.1982 which resulted in passing of the Second Eviction Order dated 17.12.1990 which was the conditional order and the said conditional order has also been fully complied by the Appellant and compliance of the same was intimated by the Appellant to the respondents by his letter dated 26.12.1990. Therefore, even the Second Conditional Order dated 17.12.1990 came to an end once the compliance has been effected.
>
> J3. The Respondents have committed an error in law that there is and/or are any effective and enforceable eviction orders in operation and/or in existence

> and therefore, the Respondents have absolutely no authority to pass any orders under the provisions of Section 7 of PPE Act, 1971 and therefore, sealing of hangers No.5 & 5A during the pendency of Misc.Appeals amounts to illegal and unconstitutional acts and the same are required to be set aside and quashed."

The learned Judge accepted the contention that the eviction order has become ineffective and unenforceable despite the above facts and he held that the respondents were not in unauthorised occupation and hence there was no question of fixing damages under section 7(2) of the said Act. In our opinion the learned Judge has misdirected himself in holding thus for the reasons we have noted in the preceding paragraphs.

19. We are also unhappy to note that the respondent’s counsel has not bothered to remain present to assist the Court. We heard this petition on 21.7.06 but adjourned it to 24.7.06 as the respondents counsel was not present. The respondent’s counsel is not present today. We had to therefore proceed with the hearing of the petition with the assistance of the learned counsel for the petitioners.

20. In the view that we have taken, we allow the petition. We set aside the impugned order dated 8.10.96 passed by the Principal Judge of City Civil Court, Mumbai in Misc. Appeal no.73 of 1996. The petition is disposed of in the above terms. In view of the disposal of the petition, the civil application does not survive and is disposed of as such.

(Smt.Ranjana Desai,J)

(A.P. Deshpande, J)